BILL NO. S-90-05-26

SPECIAL ORDINANCE NO. S-116-90

AN ORDINANCE approving Contract **FOR RES. 6156-90, OXFORD NSA '90** between **DEHNER CONSTRUCTION COMPANY, INC.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **FOR RES. 6156-90, OXFORD NSA '90** by and between **DEHNER CONSTRUCTION COMPANY, INC.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the improvement of the following: 1. curb & walk restoration on Wiebke from Lafayette to Warsaw. 2. curb restoration on Agnes from Lafayette to Warsaw. 3. curb & walk restoration on Hanna Street from Eckert to Drexel (e. side only fronting Weisser Park);

involving a total cost of Eighty-Five Thousand Nine Hundred Thirty-Eight and 80/100 Dollars ($85,938.80).

SECTION 2. Prior Approval has been requested from Common Council on **May 2, 1990.** Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay, City Attorney

CONTRACT NO. 6156-90

OXFORD NSA'90

BOARD ORDER NO. 156-89 WORK ORDER NO. 10,826

THIS CONTRACT made and entered into in triplicate this 9th day of May, 1990, by and between DEHNER CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

RES. NO. 6156-90 OXFORD NSA'90

all according to RES. NO. 6156-90, Drawing No. _____, Sheets _____, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $ 85,938.80. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

tion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Contract No. 6156-90.
b. Instructions to Bidders for Contract No. 6156-90.
c. Contractor's Proposal Dated 4/18/90.
d. Ft. Wayne Engr. Dept. Drawing #_____.
e. Supplemental Specifications for Contract No. 6156-90.
f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Minority/Female Employment Hourly Utilization.
l. Right-of-Way Cut Permit.
m. Comprehensive Liability Insurance Coverage.
n. MBE/WBE Committment Form.
o. _____
p. _____

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insuror acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 6/30/90 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: Gregory Dehner

Gregory Dehner, President

BY: Thomas H. Sadler

Thomas H. Sadler, Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS & SAFETY

_____
Charles E. Layton
Director of Public Works

_____
Michael McAlexander
Director of Public Safety

_____
Douglas M. Lehman
Director of Administration & Finance

ATTEST:

_____
Helen V. Gochenour, Clerk

CERTIFICATE OF INSURANCE

DATE: 04/30/90

PRODUCER

Yaste, Zent & Rye Agency, Inc.
127 W. Berry St., Ste. 1200
P.O. Box 1367
Fort Wayne, IN 46801
(219) 423-1591

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHT UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A	MONROE GUARANTY
COMPANY LETTER B	MOTORIST MUTUAL INSURANCE COMPANY
COMPANY LETTER C	
COMPANY LETTER D	
COMPANY LETTER E	

INSURED

Dehner Construction Inc.

2110 Lower Huntington Road
Fort Wayne , IN 46819

=== COVERAGES ===

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	ALL LIMITS IN THOUSANDS
GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [X] [ ] CLAIMS MADE [X] OCCURRENCE [ ] OWNER'S & CONTRACTORS PROTECTIVE [ ] [ ]	MG 127065 N-9	12/30/89	12/30/90	GENERAL AGGREGATE $ 1000 PRODUCTS-COMP/OPS AGGREGATE $ 1000 PERSONAL & ADVERTISING INJURY $ 1000 EACH OCCURRENCE $ 1000 FIRE DAMAGE (ANY ONE FIRE) $ 50 MEDICAL EXPENSE(ANY ONE PERSON)$ 5
AUTOMOBILE LIABILITY [X] ANY AUTO [X] ALL OWNED AUTOS [X] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS [ ] GARAGE LIABILITY [ ]	33.169770-E	01/25/90	01/25/91	CSL $ 1000 BODILY INJURY (PER PERSON) $ BODILY INJURY (PER ACCIDENT) $ PROPERTY DAMAGE $
EXCESS LIABILITY [ ] UMBRELLA FORM [ ] OTHER THAN UMBRELLA				EACH OCCURRENCE $ / AGGREGATE $
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	MG127065 W-9	12/30/89	12/30/90	STATUTORY $ 100 (EACH ACCIDENT) $ 500 (DISEASE-POLICY LIMIT) $ 100 (DISEASE-EACH EMPLOYEE)
OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

ANY AND ALL OPERATIONS OF THE ABOVE NAMED INSURED. LIMITS SHOWN ARE THOSE IN EFFECT AS OF POLICY INCEPTION.

=== CERTIFICATE HOLDER ===

City of Fort Wayne
Board of Public Works & Safety
One Main Street
Fort Wayne, IN 46802

=== CANCELLATION ===

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE John J. Pikel

CERTIFICATE OF INSURANCE

DATE: 04/30/90

PRODUCER

Yaste, Zent & Rye Agency, Inc.
127 W. Berry St., Ste. 1200
P.O. Box 1367
Fort Wayne, IN 46801
(219) 423-1591

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COMPANIES AFFORDING COVERAGE

COMPANY LETTER A — MONROE GUARANTY

COMPANY LETTER B — MOTORIST MUTUAL INSURANCE COMPANY

COMPANY LETTER C

COMPANY LETTER D

COMPANY LETTER E

INSURED

Dehner Construction Inc.

2110 Lower Huntington Road
Fort Wayne , IN 46819

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LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	ALL LIMITS IN THOUSANDS
	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [X] [ ] CLAIMS MADE [X] OCCURRENCE [ ] OWNER'S & CONTRACTORS PROTECTIVE [ ] [ ]	MG 127065 N-9	12/30/89	12/30/90	GENERAL AGGREGATE $ 1000 PRODUCTS-COMP/OPS AGGREGATE $ 1000 PERSONAL & ADVERTISING INJURY $ 1000 EACH OCCURRENCE $ 1000 FIRE DAMAGE (ANY ONE FIRE) $ 50 MEDICAL EXPENSE(ANY ONE PERSON)$ 5
	AUTOMOBILE LIABILITY [X] ANY AUTO [X] ALL OWNED AUTOS [X] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS [ ] GARAGE LIABILITY [ ]	33.169770-E	01/25/90	01/25/91	CSL $ 1000 BODILY INJURY (PER PERSON) $ BODILY INJURY (PER ACCIDENT) $ PROPERTY DAMAGE $
	EXCESS LIABILITY [ ] UMBRELLA FORM [ ] OTHER THAN UMBRELLA				EACH OCCURRENCE $ / AGGREGATE $
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	M6127065 W-9	12/30/89	12/30/90	STATUTORY $ 100 (EACH ACCIDENT) $ 500 (DISEASE-POLICY LIMIT) $ 100 (DISEASE-EACH EMPLOYEE)
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

ANY AND ALL OPERATIONS OF THE ABOVE NAMED INSURED. LIMITS SHOWN ARE THOSE IN EFFECT AS OF POLICY INCEPTION.

=== CERTIFICATE HOLDER ===

City of Fort Wayne
Board of Public Works & Safety
One Main Street
Fort Wayne, IN 46802

=== CANCELLATION ===

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AUTHORIZED REPRESENTATIVE John J. Pickel

FIDELITY AND GUARANTY INSURANCE COMPANY

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Dehner Construction, Inc.
2110 Lower Huntington Road
Fort Wayne, IN 46819

SURETY (Name and Principal Place of Business):

FIDELITY AND GUARANTY INSURANCE COMPANY
135 N. Pennsylvania Ave.
Ste 1000
Indianapolis, IN 46204

OWNER (Name and Address):

City of Fort Wayne, Board of Public Works & Safety
1 Main Street
Fort Wayne, IN 46801

CONSTRUCTION CONTRACT

Date: April 18, 1990
Amount: $85,938.80
Description (Name and Location): Resolution #6156-90
Oxford NSA 90

BOND

Date (Not earlier than Construction Contract Date): April 18, 1990
Amount: $85,938.80
Modifications to this Bond: ☒ None ☐ See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Dehner Construction, Inc.

Signature: _____
Name and Title: Gregory Dehner
President

SURETY FIDELITY AND GUARANTY INSURANCE COMPANY

Company: (Corporate Seal)

Signature: _____
Name and Title: John J. Pikel
Attorney-in-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

YASTE, ZENT & RYE AGENCY, INC.
P.O. Box 1367
Fort Wayne, IN 46801

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY **FIDELITY AND GUARANTY INSURANCE COMPANY**	
Company:	(Corporate Seal)	Company:	(Corporate Seal)
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	
Address:		Address:	

FIDELITY AND GUARANTY INSURANCE COMPANY

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Dehner Construction, Inc.
2110 Lower Huntington Road
Fort Wayne, IN 46819

SURETY (Name and Principal Place of Business):

FIDELITY AND GUARANTY INSURANCE COMPANY
135 N. Pennsylvania Ave.
Ste 1000
Indianapolis, IN 46204

OWNER (Name and Address):

City of Fort Wayne, Board of Public Works & Safety
1 Main Street
Fort Wayne, IN 46801

CONSTRUCTION CONTRACT
Date: April 18, 1990
Amount: $85,938.80
Description (Name and Location): Resolution #6156-90
Oxford NSA 90

BOND
Date (Not earlier than Construction Contract Date): April 18, 1990
Amount: $85,938.80
Modifications to this Bond: ☒ None ☐ See Page 6

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
Dehner Construction, Inc.
Signature: Gregory Dehner
Name and Title: Gregory Dehner
President

SURETY FIDELITY AND GUARANTY INSURANCE COMPANY
Company: (Corporate Seal)
Signature: John J. Pikel
Name and Title: John J. Pikel
Attorney-in-Fact

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

YASTE, ZENT & RYE AGENCY, INC.
P.O. Box 1367
Fort Wayne, IN 46801

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Contract 674 (6-89)

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	**FIDELITY AND GUARANTY INSURANCE COMPANY**
Company:	(Corporate Seal)	Company:	(Corporate Seal)
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	
Address:		Address:	

FGIC

CERTIFIED COPY

GENERAL POWER OF ATTORNEY

NO. FGIC 597

KNOW ALL MEN BY THESE PRESENTS:

That FIDELITY AND GUARANTY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Iowa, and having its principal office at 100 Light Street, Baltimore, Maryland 21202, does hereby constitute and appoint Gerald A. Dahle, John J. Pikel, Donald T. Belbutowski and Diane T. Green

of the City of Fort Wayne , State of Indiana
its true and lawful Attorneysin-Fact, with power and authority to sign its name as surety to, and to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof; and the said FIDELITY AND GUARANTY INSURANCE COMPANY hereby ratifies and confirms all of the acts of said Attorneysin-fact, pursuant to these premises.

This appointment is made under and by authority of a by-law of the said FIDELITY AND GUARANTY INSURANCE COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney.

IN WITNESS WHEREOF, the said FIDELITY AND GUARANTY INSURANCE COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signature of its Assistant Vice-President and Assistant Secretary, this 8th day of April , 19 88 .

FIDELITY AND GUARANTY INSURANCE COMPANY

(Signed) By W. J. D. Somerville, Jr.
Assistant Vice-President.

(SEAL) (Signed) W. R. Holley
Assistant Secretary.

STATE OF MARYLAND
BALTIMORE CITY ss:

On this 8th day of April ,19 88 , before me personally came W. J. D. Somerville, Jr. ,Assistant Vice President of FIDELITY AND GUARANTY INSURANCE COMPANY and W. R. Holley , Assistant Secretary of said Corporation, with both of whom I am personally acquainted, who being by me severally sworn, said that they, the said W. J. D. Somerville, Jr. , and W. R. Holley were respectively the Assistant Vice President and Assistant Secretary of the said FIDELITY AND GUARANTY INSURANCE COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal; that it was so affixed by authority of the by-laws of said corporation; and that they signed their names hereto like authority as Assistant Vice President and Assistant Secretary, respectively, of the Corporation.

My Commission expires the first day of July, 19 90 .

(SEAL) (Signed) Margaret M. Hurst
NOTARY PUBLIC

FS 83 (2-88) (HO)

Read the first time in full and on motion by DeQuinta, seconded by Edmonds, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room ~~128, City-County~~ Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock ____.M.,E.S.T.

DATED: 5-22-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Edmonds, seconded by Talarico, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	6		1	2
BRADBURY				
BURNS	✓			
EDMONDS	✓			
GiaQUINTA				
HENRY	✓			
LONG			✓	
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 6-12-90.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ (APPROPRIATION) (GENERAL) (SPECIAL) ~~(ZONING MAP)~~ ORDINANCE ~~RESOLUTION~~ NO. S-116-90 on the 12th day of June, 1990,

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL

Charles S. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of June, 1990, at the hour of 11:45 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 22d day of June, 1990, at the hour of 3:00 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Contract for Res. 6156-90, Oxford NSA '90

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works & Safety

SYNOPIS OF ORDINANCE: The Contract for Res. #6156-90, Oxford NSA '90, is for the improvement of the following: 1. curb & walk restoration on Wiebke from Lafayette to Warsaw. 2. curb restoration on Agnes from Lafayette to Warsaw. 3. curb & walk restoration on Hanna Street from Eckert to Drexel (e. side only fronting Weisser Park). Dehner Construction Company, Inc., is the Contractor. **PRIOR APPROVAL RECEIVED ON 5/2/90.**

S-90-05-26

EFFECT OF PASSAGE: Improved curb and walks at above location.

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $85,938.80

ASSIGNED TO COMMITTEE:

BILL NO. S-90-05-26

REPORT OF THE COMMITTEE ON PUBLIC WORKS

MARK E. GiaQUINTA, CHAIRMAN
CLETUS R. EDMONDS, VICE CHAIRMAN
HENRY, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving CONTRACT FOR RES. 6156-90, OXFORD NSA '90 between DEHNER CONSTRUCTION COMPANY, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Samuel J. Talarico			
Cletus R Edmonds			
D Schmidt			

DATED: 6-12-90

Sandra E. Kennedy
City Clerk